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S.B. CIVIL MISC. APPEAL NO.1587/2007.
Smt. Anjana & Ors. Vs. Mani Lal & Ors.

Date of Order :: 29th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. P.S. Chundawat, for the appellants.

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For quantification of compensation to be awarded to the wife, two minor children and parents of the vehicular accident victim Mukesh Pandya, the Tribunal has noticed the assertion of the claimants that the victim was 30 years of age, and was earning Rs.6,093/- in salary apart from allowances while working as a police constable and another Rs.2,000/- in religious ceremonies. However, the Tribunal has observed that the claimants have not produced specific proof regarding the age of the victim whereas the postmortem report (Ex.5) indicated his age at about 35 years; and the inquest report (Ex.3) stated his age at about 38 years and has, therefore, taken his age around 35-38 years. With reference to the salary certificate (Ex.17), the Tribunal has taken monthly income of the deceased at Rs.5,528/-, inclusive of Rs.3,425/- basic salary, Rs.1,678/- DA and Rs.425/- towards hard duty allowance; and has not included the other allowances in his net income. Thus, the Tribunal has taken the net annual income of the deceased at Rs.66,336/- (5,528/- x 12); and in

view of the age of the deceased, has provided for 25% enhancement towards future prospects and has, accordingly, taken his average annual income at Rs.82,920/-; and deducting one-third wherefrom towards personal expenditure, has taken loss of contribution for the claimants at Rs.55,280/-. The Tribunal has, thereafter, considered it appropriate to apply multiplier of 12 in place of multiplier of 16 as provided under the Second Schedule to the Motor Vehicles Act, 1988 ('the Act') with reference to the decision of the Hon'ble Supreme Court in the case of T.N. State Transport Corporation Vs. S. Rajapriya; and has assessed pecuniary loss at Rs.6,63,360/- (55,280/- x 12). The Tribunal has further allowed Rs.1,000/- towards transportation, Rs.2,000/- towards funeral expenses, and Rs.30,000/- towards non-pecuniary loss; and in this manner has assessed total loss for the claimants at Rs.6,96,360/-; and while making the award in this amount, has allowed interest @ 6% per annum from the date of filing of the claim application. The claimants seek enhancement in this appeal.

Learned counsel Mr. P.S. Chundawat appearing for the appellants has strenuously contended that the Tribunal has been in error in taking the age of the victim at 38 years with reference to the approximation stated by the inquest reports, though the victim was only 30 years of age; that the Tribunal

has been in error in assessing multiplicand while providing only 25% towards future prospects, though the deceased was in a settled job and in the overall circumstances, minimum 50% enhancement ought to have been provided; that the Tribunal has been seriously in error in applying multiplier of 12 only though a multiplier of 17 as provided for the age group of 30-35 years ought to have been applied in the present case; and that the Tribunal has not considered excessive dependency of five claimants and has erred in deducting one-third on personal expenditure of the deceased.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the record, this Court is satisfied that impugned award cannot be said to be less than that of just compensation admissible in this case; and rules out any scope for enhancement.

The Tribunal has rightly observed that when the deceased was in regular employment, the claimants could have definitely produced cogent evidence in proof of his age; and for the claimants failing to produce any such evidence, the Tribunal cannot be said to have erred in putting an estimate on his age with reference to the postmortem report (Ex.5) and inquest report (Ex.3).

So far the assessment of multiplicand is concerned, it is noticed that the Tribunal has taken monthly income of the deceased at Rs.5,528/- inclusive of Rs.425/- towards hard duty allowance. Then, although there has not been any direct and specific evidence in relation to the future prospects, the Tribunal has yet taken a reasonable view of the matter; and for deceased being in government employment, has provided for 25% enhancement. Assessment of average annual income by the Tribunal in this case at Rs.82,920/- cannot be said to too low or inadequate.

So far deduction of one-third on the personal expenditure is concerned, in the overall circumstances of the case, such deduction appears to be reasonable. Though the claimants are five in number but the claimants-parents have not been shown exclusively dependent on the victim alone; and the claimant-wife PW-1 Smt. Anjana has pointed out that her husband had three brothers, two elder and one younger; and that one of the elder brother was in service and another was carrying on business; and that her parents-in-law were maintaining a separate ration card.

So far application of multiplier of 12 is concerned, at the first sight the same appears to be wee bit on the lower side; but when examined in the context of the overall fact situation of the case and the fact that the Tribunal has put an estimate

on the annual income of the deceased at Rs.82,920/- and has taken annual multiplicand at Rs.55,280/-, such application of multiplier of 12 does not appear to be leading to any injustice. The multiplier as stated in the Second Schedule to the Act in relation to the maximum annual income of Rs.40,000/- cannot indiscriminately be applied to every case of claim for compensation under Section 166 of the Act; and with the multiplicand standing at Rs.55,280/-, application of multiplier of 12 cannot be said to be leading to improper assessment of pecuniary loss in this case.

In the overall view of the matter, the assessment of loss as made by the Tribunal in the sum of Rs.6,96,360/- cannot be said to be too low or grossly inadequate so as to call for interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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